IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

Bail Appl..No. 231 of 2007()

SC.555/2003 of ADDL.D.C.(SPL.COURT FOR TRIAL FOR MARADU CASES) KOZHIKODE

PETITIONER

C.P.MOITHEEN KOYA,
S/O.KUNJUMUHAMMAD KUTTY,
CHEERAMANTE PURACKAL, CHETTIPPADI,
PARAPPANANGADI, MALAPPURAM DIST.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM, KOCHI-31.

2. THE CRIME BRANCH C.I.D.,
   REP. BY DEPUTY SUPERINTENDENT OF POLICE,
   KOZHIKODE.

BY DIRECTOR GENERAL OF PROSECUTIONS SRI. P.G. THAMBI

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 22/01/2007, THE COURT ON 25-01-2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

B.A.No.231 of 2007

Dt. JANUARY 25, 2007

O R D E R

Petitioner who is the 97th accused in S.C. 555/2003 on the file of the Special Court for Trial of Marad Cases, seeks his enlargement on bail.

2. The petitioner along with 138 accused persons stand trial for offences punishable under Sections 143, 147, 148, 427, 448, 449, 324, 326, 307, 302, 435, 120 B and 153 A read with Sec. 149/34 I.P.C. and Sec. 27 of the Arms Act, 1959, Section 3 and 5 of the Explosive Substances Act, 1908 and Sections 3, 4 and 9 read with Section 7 of the Religious Institutions (Prevention of Misuse) Act, 1988.

3. Sri. P.G. Thambi, the learned Director General of Prosecutions opposed the application.

4. This is the "Marad Carnage" case in which 8 persons were killed and several persons injured in the communal clashes. According to the prosecution, the whole incident was pre-planned pursuant to a criminal conspiracy hatched by the accused persons.

There are altogether 139 accused persons of whom 137 including the petitioner herein are in custody. Earlier bail applications filed by the petitioner and others before the trial court were all dismissed. This court had also turned down the request for bail made by the petitioner. In as much as pursuant to the direction of this Court while disposing of the petitioner's bail application, appropriate treatment has been provided to him, he cannot be granted bail on medical grounds too. Hence, I am not inclined to grant bail to the petitioner, particularly, when the case has reached the fag-end of trial. Going by the in - puts furnished by the special judge, altogether 251 witnesses have been examined by the prosecution and 781 documents have been marked. The deposition of witnesses runs into 5059 pages . The Special Judge has prepared 273 questions as on 17-1-2007. He has reported to this Court that he has prepared a questionnaire of 37 sets and each of such sets has 20 pages. This means that 139 copies of each of the 37 sets contains 2780 pages. If copies of all the 37 sets are to be taken, that will consume 102860 pages. This figure is only with regard to the 273 questions already framed by the Special Judge.

Going by his report of the Special Judge approximately four months' time will be needed to prepare and take photocopies of the remaining set of questionnaire. If the Special Judge were to orally put each of these questions to each of the accused and elicit his answer, by the time the 313 examination is completed it may take nearly two years. Going by the report of the Special Judge, accused persons ranging from 5 to 19 out of the 139 accused persons remain absent on each of the dates of posting. Reasons for their non-production are many including medical grounds. Accused No. 131 (Abbas) is continuously absent from 21-8-2006 onwards since he is reported to be a patient of brain tumour undergoing radiotherapy. Similarly, accused No. 89 Rafeeq is absent from 27-11-2006. Likewise, accused No. 55 Tajudeen is absent from 27-10-006 onwards as he is reported to be a patient of heart disease. Accused No. 119 Abdul Khader is a deaf and dump accused and his wife Vicheebi has been appointed as his interpreter.

5. In the backdrop of the above factual scenario, I do not consider it expedient for the Special Judge to undertake an oral examination of the accused under Sec. 313 (1)(b) Cr.P.C. as such

a course will consume more time and will thereby prolong the custody of the 137 under trial prisoners including the petitioner herein.

6. After hearing the learned counsel for the petitioner and the learned Director General of Prosecutions, I am of the view that having regard to the aforementioned facts and the constitutional right of the accused persons for speedy trial it will be expedient in the interests of justice to allow the Special Judge to provide a copy of the questionnaire in piecemeal to each of the accused persons through their counsel and obtain their answers within a time frame to be fixed by the Special Judge along with an appropriate undertaking by the counsel as was done by the apex court in Basavaraj R. Patin and others v. State of Karnataka and others - AIR 2000 SC 3214 although in a different factual setting. The Special Judge shall complete the examination of the accused under Sec. 313(1)(b) Cr.P.C. expeditiously, and at any rate , within five months from today. If for any reason, the Special Judge is unable to adhere to the time frame fixed as above he shall forward a report to the registry of this court explaining the reasons as to why he was

unable to stick to the above time frame.

This application is accordingly disposed of as above directing the expeditious completion of the examination of the accused under Sec. 313 (1)(b) Cr.P.C.

V. RAMKUMAR, JUDGE.

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